

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHARLES ALAN DYER,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. CIV-16-941-C
	)	
JIM FARRIS, Warden	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, a prisoner appearing before the Court pro se, has filed a Notice of Intent to Appeal and Request for Certificate of Appealability (Dkt. No. 44) which the Court will construe as a request for Certificate of Appealability (“COA”). Petitioner seeks appeal from a final order denying his 28 U.S.C. § 2254 claim and requests the Court to enter a Certificate of Appealability (“COA”) pursuant to 28 U.S.C. § 2253.

Petitioner, an Oklahoma state prisoner, must obtain a COA prior to consideration of his claims by an appellate court. “Under AEDPA, a COA may not issue unless ‘the applicant has made a substantial showing of the denial of a constitutional right.’” Slack v. McDaniel, 529 U.S. 473, 483 (2000) (quoting 28 U.S.C. § 2253(c)(2)). The Petitioner “must make a substantial showing of the denial of a constitutional right, a demonstration that . . . includes showing that reasonable jurists could debate whether . . . the petition should have been resolved in a different manner . . .” Id. at 484. If “a district court has rejected the constitutional claims on the merits . . . [t]he petitioner must demonstrate that

reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 484.

Here, Petitioner has not demonstrated the requisite standard that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. The Report and Recommendation ("R&R") accurately set out the facts and law and, as a result, Petitioner is not entitled to federal habeas relief. The Magistrate Judge found that Petitioner's arguments were not persuasive and this assessment of constitutional claims is not reasonably debatable. This Court concludes that Petitioner is not entitled to a COA.

Accordingly, Petitioner's Notice of Intent to Appeal and Request for Certificate of Appealability, which is construed as Motion for Certificate of Appealability (Dkt. No. 44) is DENIED.

IT IS SO ORDERED this 9th day of January, 2019.

  
ROBIN J. CAUTHRON  
United States District Judge